

Message Text

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PAGE 01 SANTIA 06148 082306Z

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SUBJECT: SUPREME COURT DECLARES PORTION OF JUNTA DECREE LAW INVALID

1. SUMMARY: IN WHAT APPEARS TO BE FIRST SUCH CASE, SUPREME COURT HAS DECLARED UNCONSTITUTIONAL PART OF A JUNTA DECREE DEPRIVING OF SEVERENCE PAY PUBLIC SECTOR EMPLOYEES DISMISSED FOR POLITICAL ACTIVITIES. END SUMMARY.

2. "EL MERCURIO" OCT 6 REPORTED SUPREME COURT DECISION REACHED OCT 4 WHICH IN EFFECT INVALIDATES PORTION OF DECREE LAW NO. 472 ALLOWING PUBLIC SECTOR EMPLOYERS TO DISMISS EMPLOYEES FOR GENERAL REASONS OF POLITICAL ACTIVITIES WITHOUT PAYMENT OF SEVERANCE PAY. SUIT WAS ORIGINATED BY THREE FORMER EMPLOYEES OF SEMI-AUTONOMOUS AGRICULTURAL TRADE AGENCY (EMPRESA DE COMERCIO AGRICOLA -- ECA), WHO COMPLAINED THAT THEY HAD BEEN DISMISSED BY EMPLOYER UNDER PROVISIONS OF DECREE 472 WITHOUT SEVERANCE PAY REQUIRED BY LAW 7295 OF LABOR CODE. EMPLOYEES CLAIMED SEVERANCE PAY (ONE MONTH'S SALARY FOR EACH YEAR OF SERVICE) WAS THEIR EARNED RIGHT AND PROPERTY, AND THAT FAILURE TO PAY CONSTITUTED VIOLATION OF THEIR CONSTITUTIONAL RIGHT TO ACQUIRE PROPERTY.

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PAGE 02 SANTIA 06148 082306Z

3. AS REPORTED BY "MERCURIO", HIGH COURT AGREED FAILURE TO

PAY EARNED "PROPERTY" VIOLATED PLAINTIFFS' CONSTITUTIONAL RIGHTS, ORDERED PAYMENT, AND DECLARED PERTINENT PROVISIONS OF DECREE 472 "UNCONSTITUTIONAL". DECISION AS REPORTED SAID: "WE CANNOT SUPPORT THE POSITION OF A SOCIAL LAW WHICH DEPRIVES AN EMPLOYEE OF AN EARNED ACQUISITION -- ESPECIALLY IN THESE TIMES IN WHICH SOCIAL RIGHTS ARE THE MOST IMPORTANT PART OF THE PATRIMONY OF WORKERS, WHO ARE INDIVIDUALS WHO LIVE ONLY BY THEIR PERSONAL LABOR."

4. "MERCURIO" QUOTED PLAINTIFFS' LAWYER AS DECLARING THAT DECISION WOULD ALLOW ALL PUBLIC EMPLOYEES DISMISSED UNDER SIMILAR CIRCUMSTANCES TO COLLECT UNPAID SEVERANCE PAY.

5. COMMENT: UNDER CHILEAN SYSTEM, WE UNDERSTAND DECISION WILL APPLY ONLY TO THREE PLAINTIFFS INVOLVED IN THIS ACTION. HOWEVVE, DECISION WILL UNDOUBTEDLY SPUR SIMILAR CLAIMS FROM OTHER PUBLIC EMPLOYEES DISMISSED WITHOUT SEVERANCE PAY PAST 14 MONTHS FOR "POLITICAL ACTIVITY." IT COULD ALSO ENCOURAGE FORMER WORKERS IN PRIVATE SECTOR WHO WERE PRESSURED INTO RESIGNATIONS BY EMPLOYERS TO SEEK UNAPID "EARNED SEVERANCE PAY".

6. ASIDE FROM SOCIAL IMPACT AMONG ADMITTEDLY SMALL PORTION OF TOTAL CHILEAN WORK FORCE, THERE ARE BROADER IMPLICATIONS FOR FUTURE. TO OUR KNOWLEDGE THIS IS FIRST TIME JUDICIARY HAS ANNULLED PORTIONS OF A JUNTA DECREE AND, AGAIN ACCORDING TO "MERCURIO", DONE SO WITH RELATIVELY STRONG LANGUAGE. NO ONE HAS DOUBTED THAT COURTS HELD LEGAL POWER TO MAKE SUCH DECISIONS, BUT THEY HAVE HERETOFORE BEEN EXTREMELY CAUTIOUS IN ASSERTING THEIR PREROGATIVES. NOT ONLY DO THEY ACT AS AN INDEPENDENT BRANCH IN THIS CASE, BUT THEY ACT IN AN AREA OF SOME POLITICAL SENSITIVITY, SINCE MANY PEOPLE WERE THROWN OUT OF THEIR JOBS DURING THE JUNTA'S CLEANUP OF THE ALLENDE REGIME, PRINCIPALLY ON POLITICAL GROUNDS BUT ALSO IN EFFORT TO SQUEEZE DOWN WIDESPREAD OVERSTAFFING WHICH OCCURRED DURING THAT PERIOD.

7. EMBASY BELIEVES THAT NUMBER OF PERSONS WHO MIGHT AVAIL THEMSELVES OF SUPREME COURT DECISION WOULD BE TOO FEW TO HAVE SIGNIFICANT BUDGETARY IMPACT.

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PAGE 03 SANTIA 06148 082306Z

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